

Application No. 10/613,608  
Attorney Docket No.: LS-001

PATENT

## REMARKS

Claims 1 to 16 were pending in the present application.

Claims 1 to 17 will be pending upon entry of the present amendment.

Claim 15 will have been amended herein.

Claim 17 will have been added herein.

Claims 1 and 10 to 15 are independent.

**A. ALLOWABLE/ALLOWED CLAIMS**

Applicant appreciates the indication that Claim 13 is allowed.

Applicant appreciates the Examiner's indication that Claim 9 would be allowable if written in independent form including all features of the base claim and intervening claims. Applicant declines to do so at this time, relying on the distinctions and reasons for patentability presented below.

Claim 15 stands as objected to but appears to otherwise be allowable. Applicant respectfully requests confirmation.

**B. SECTION 103 REJECTIONS**

Claims 1 to 6, 11, and 12 stand rejected under 35 U.S.C. Section 103 as unpatentable over U.S. Patent No. 4,930,504 to Diamantopoulos et al. in view of U.S. Patent Application Publication No. US2004/0215176 to Bahk. Claims 7, 8, 10, and 14 stand rejected under 35 U.S.C. Section 103 as unpatentable over Diamantopoulos in view of Bahk and further in view of 5,860,967 to Zavislans et al. Applicant respectfully traverses these rejections.

Applicant asserts that none of the references teach or even suggest a "light emitting diode array to be **repeatably** positioned on a target area" (emphasis added) as recited in Applicant's claims. The so-called "positioning" disclosed in Diamantopoulos cannot reasonably be interpreted to be repeatable as that term is used in Applicant's specification. For example Applicant's

Application No. 10/613,608  
Attorney Docket No.: LS-001

PATENT

specification describes applying "clinically repeatable dosages" of light (See e.g., page 8, line 31 to page 9, line 7) and "repeatable tissue dosing." Such applications of therapeutic light allow much greater control over the treatment than is contemplated or even possible using the prior art system. Diamantopoulos merely provides a probe handle that clearly does not enable repeatable positioning on a target area as Applicant's claims recite. Further, the Diamantopoulos reference does not even describe applying a sufficient amount of light to have a therapeutic effect. Therefore, Applicant respectfully requests withdrawal of the Section 103 rejections based upon these distinctions alone.

In addition, Applicant's claims recite that positioning of the array is repeatable from treatment to treatment (e.g., "repeatably positioned on a target area during each of a plurality of different non-contact light therapy treatments"). The Examiner has not addressed this feature of Applicant's invention at all. Therefore, Applicant respectfully requests withdrawal of the Section 103 rejections based upon this further distinction.

The Examiner concedes that Diamantopoulos does not teach using a ranging mechanism. The Examiner asserts that the "distance detecting sensor" disclosed in the high power laser system of Bahk is used "to measure[] the distance between the irradiated surface and the lens (abstract)" (Office Action, pg. 3). However, paragraphs 0019 and 0020 of Bahk make it clear that the distance detecting sensor is used only to cut off irradiation of the laser when the laser is away from the irradiated surface.

In other words, the Bahk sensor is merely a safety feature that turns off the high power laser when it is too far, or pointed away, from a target. Thus, the sensor in Bahk is not "a ranging mechanism operable to indicate a preferred distance to a target area" as Applicant's claims recite. Much less, the Bahk sensor is clearly not part of "a targeting mechanism . . . to allow [a] . . . diode array to be repeatably positioned on a target area"

Application No. 10/613,698  
Attorney Docket No.: LS-001

PATENT

as Applicant's claims further recite. Thus, there is no teaching or suggestion that a ranging mechanism may be used for purposes of enhancing repeatability in subsequent treatments. Applicant respectfully requests withdrawal of the Section 103 rejections based upon this additional distinction.

Further, inside of a certain range (i.e., within the focal length of a condensing lens) the Bahk sensor has no effect. In fact, the Bahk sensor merely indicates that the laser is within a predetermined distance to a target, it does not indicate a preferred treatment distance, much less a distance related to a prior treatment.

In addition, the Examiner has not provided a proper motivation to combine the Bahk sensor into the Diamantopoulos probe. The Examiner asserts that his combination would have been obvious "to better control the fluence by establishing a known distance." However, this idea is not suggested or even supported by either reference. Neither Diamantopoulos nor Bahk is concerned with controlling fluence via distance, much less via a known distance. As indicated above, Bahk does not even provide an indication of a known distance when the laser is actually radiating. Thus, one of ordinary skill would not have been motivated by the references to make the Examiner's combination. Further, since there is no evidence of any recognition of a need to control fluence via distance in the knowledge generally available to one of ordinary skill in the art and the only suggestion to do so appears to be in Applicant's application, it appears the Examiner has improperly relied upon hindsight reasoning. Absent a proper motivation to combine the references, the Examiner cannot establish a *prima facie* case of obviousness and thus, Applicant respectfully requests withdrawal of the Section 103 rejections on this additional ground.

Regarding Claims 8, 12 and 14, Applicant's claims recite that an imaging device/system is used to facilitate the positioning of the array. The Examiner relies upon Zavislan as teaching this feature. However, Zavislan does not provide any

Application No. 10/613,603  
Attorney Docket No.: LS-501

PAGES?

suggestion that an imaging system may be used for positioning an array. Even if Zavislan did disclose such a feature, which it does not, the rejection of Claims 8, 12 and 14 would still be untenable because the Examiner has not provided any motivation to combine Zavislan with the other references. The Examiner merely asserts that the combination would have been obvious without providing any reasoning or identifying a suggestion in any of the references. Absent any motivation to combine the references, the Examiner cannot establish a *prima facie* case of obviousness and thus, Applicant respectfully requests withdrawal of the Section 103 rejections on this additional ground.

#### **C. CLAIM OBJECTION**

Claim 15 has been amended to clarify that the second image is a displayed image and not merely stored in, for example, a display memory. Thus, the array may be positioned by aligning a displayed image captured by a camera 110 coupled to the array (see Fig. 3B) with a stored image, e.g., from a prior treatment. Thus, Applicant asserts that as amended, Claim 15 overcomes the Examiner's objection and Applicant respectfully requests withdrawal of the objection and allowance of Claims 15 and 16.

#### **D. NEW CLAIM**

Claim 17 has been added herein and is clearly patentable over the relied upon references. Claim 17 is directed to positioning the array based upon superimposing a current image over a stored image. Support for this aspect of the present invention may be found, for example, on page 16, lines 26 to 31 of Applicant's specification.

#### **E. CONCLUSION**

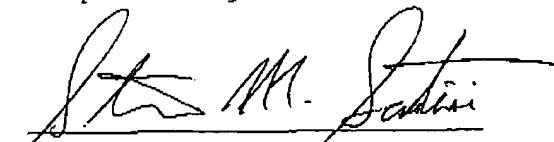
The Applicant believes all of the claims are in condition for allowance, and respectfully request reconsideration and allowance of the same. The Applicant has indicated any additional amount due regarding this amendment in the transmittal

Application No. 10/613,608  
Attorney Docket No.: LS-001

PATENT

filed herewith. If any other fees are required, however, please charge Deposit Account No. 04-1696. If a petition of time is required, please accept this sentence as a request for additional time to respond and charge Deposit Account No. 04-1696 any required fees. The Applicant encourages the Examiner to telephone the Applicant's attorney should any issues remain.

Respectfully Submitted,



Steven M. Santisi, Esq.  
Registration No. 40,157  
Dugan & Dugan, PC  
Attorneys for Applicant  
(914) 332-9081

Dated: March 3, 2005  
Tarrytown, New York

-11-

LS-001 11-3-2004 Office Action Response.doc

PAGE 15/15 \* RCVD AT 3/3/2005 9:26:38 PM [Eastern Standard Time] \* SVR:USPTO-EFXRF-1/2 \* DNI:8729306 \* CSID:9143329082 \* DURATION (mm:ss):06:56